In the High Court of Punjab and Haryana at Chandigarh.

F.A.O.No.7-M of 2003.

Date of decision:29.8.2007.

Dr.Harminder Singh.

...Appellant.

Versus

Dr.Seema.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Sukhbir Singh, Advocate and Mr.Arun Bansal, Advocate for the appellant.

Mr.Anil Khetarpal Advocate for the respondent.

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Judgment.

S. N. Aggarwal, J.

Appellant-husband has assailed the judgment dated 18.10.2002 passed by the Court of Additional District Judge, Chandigarh by which the divorce petition filed by him against the respondent-wife was dismissed.

The facts are that the appellant was married to the respondent on 16.9.1993. It was a love marriage. A daughter named Kamalpreet Kaur was born from this wedlock on 25.5.1994 and a son was born on 16.12.1995.

The appellant filed divorce petition on 1.8.2000 on the ground of cruelty and also on the ground of desertion. His version was that the

respondent had left her matrimonial home on 4.5.1995 with the intention never to come back and she had left her minor daughter in the house of the appellant.

Both the grounds of cruelty and desertion were denied by the respondent in the written statement.

The parties went on trial on the following issue:-

"Whether the marriage between the parties is liable to be dissolved by a decree of divorce on the grounds mentioned in the petition as alleged? OPP"

In support of his case, the appellant himself appeared as PW-1. He also examined Dr. Ajay Mohan Vashish as PW-2, Dr. Amritpal Singh as PW-3 and Manmohan Singh (father of the appellant) as PW-4.

On the other hand, the respondent appeared as RW-1. She also examined Dr. Usha Bishnoi as RW-2 and closed her evidence.

The learned trial Court came to the conclusion that neither cruelty nor desertion was proved and dismissed the divorce petition vide impugned judgment dated 18.10.2002.

Hence, the present appeal.

At the outset, an effort was made by this Court to bring about reconciliation between the parties, but it was in vain. The parties did not agree to live together or part ways peacefully. Therefore, this appeal is being decided on merits.

The submission of learned counsel for the appellant was that it was clearly proved that the respondent had deserted the appellant with an intention never to come back. This version was proved not only by the appellant while appearing as PW-1 but it was also supported by Dr. Ajay

Mohan Vashish as PW-2, Dr. Amritpal Singh as PW-3 and Manmohan Singh as PW-4. Reference was also made to the statement of Dr. Seema Garg respondent herself who admitted that she was living apart from her husband with effect from 4.5.1995 although she deposed that she was left by the appellant and his parents in the house of her sister and the girl child was taken away by them in the evening of that day. She admitted in the cross-examination that she never resisted the attempt of her in-laws when they were snatching the child from her. Even her sister with whom she was staying did not intervene. On 5.5.1995, she went to Mansa of her own. She did not inform the appellant or his parents about the birth of a son to her at Mansa. Only **Havan** ceremony was performed. No information was given to the appellant or to his parents about it. She also admitted that she never tried to see her daughter with effect from 4.5.1995 after she was taken away from her by the parents of the appellant. She never demanded the custody of her daughter. She never sent any gift to her daughter on any occasion including on her birthday. She had not taken any step for the safety and future of her daughter as she was residing with her father. She did not make any effort for her rehabilitation in the matrimonial home.

Admittedly, it was a love marriage which was not attended by the parents of the appellant or of the respondent. The respondent has admitted that after 4.5.1995, she had not taken any step for her rehabilitation in the matrimonial life. In this context, reference may be made to the judgment of this Court reported as **Satnam Singh Versus Harjinder Kaur,** 2000(4) R.C.R (Civil) 406 in which in similar circumstances, it was held by

this Court that when a wife leaves the matrimonial home by leaving daughter in the house of her husband and the wife never looks back, it amounts to desertion. In the present case, not only the respondent had not opposed the taking away of her daughter from her custody but she never took any step to bring her back to her custody. She even never informed the appellant about the birth of a son to her. She never took any step to go back to the matrimonial home. Therefore, it is abundantly clear that the respondent had decided on 4.5.1995 itself to desert the matrimonial life. Hence, the ground of desertion is clearly proved.

Otherwise also, it is a case of broken marriage. The parties are living separately for the last more than 10 years with no intention to come back to the matrimonial life. It would be futile to ask them now to live together peacefully and happily as a married couple. In this context, reference may be made to the judgment of Hon'ble Supreme Court reported as **Naveen Kohli v. Neelu Kohli,** AIR 2006 Supreme Court 1675 in which the Hon'ble Supreme Court was pleased to observe in para No.76 as under:-

> “Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties, yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are

bound to be a source of greater misery for the parties."

It was further held by the Hon'ble Supreme Court as under:-

"78. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and the injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

79. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but when a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

80. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist."

The same view of law was repeated by the Hon'ble Supreme Court in a subsequent judgment reported as **Samar Ghosh Versus Jaya Ghosh,** 2007(2) RCR (Criminal) 515.

In the present case, it is clearly proved that it is a case of broken marriage. It cannot be retrieved and it would be unrealistic to ask the parties now after 12 years of separated life to live together happily as a married couple. The parties appear to have adjusted to the changed conditions.

For the reasons discussed above, it is a fit case where the appeal deserves to be accepted and is accepted accordingly. The marriage between the parties is declared as dissolved and the divorce decree is passed.

Since the respondent is financially well off and is posted on a very respectable job and is not keen for financial relief, therefore, she is not awarded any maintenance or permanent alimony.

However, the appellant would deposit a sum of three lacs in the name of his daughter in some nationalised Bank within one month from today and she will be entitled to withdraw this amount after attaining the age of majority. The appellant shall also hand over a Bank draft for an amount of Rs.2,50,000/- within one month to the respondent for being deposited by her in the name of her minor son and the child will be entitled to withdraw this amount after attaining the age of majority. These amounts would be towards permanent maintenance of the children.

The appellant shall file the compliance report alongwith a copy of the Fixed Deposit Receipt and a copy of the Bank draft as required above in this Court within two weeks after the expiry of one month. If he fails to do so, the file be placed before this Court for initiating necessary legal proceedings against the appellant.

August 29,2007. (S. N. Aggarwal)

Jaggi Judge